

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

PERRY OSBORNE MACKALL,

Plaintiff,

v.

Civil No. 05-10104-BC

Hon. David M. Lawson

Magistrate Judge Charles E. Binder

PATRICIA L. CARUSO, STEPHEN H.
MARSCHKE, JOHN RUBITSCHUN,
CARMEN D. PALMER, DANIEL J.
WILSON, WILLIAM CHRISTIAN, III,
LILLIAN TEFFT, HARESH R. PANDYA,
JULIE TUDOR, JAN TROMBLEY, E. HUNT,
DENNIS KENNEDY, MIKE COX, R. SMITH,
PATRICIA BEST, PAUL H. RENICO,
JAMES TOWNSEND, DAVID FENBY,
BETH DAVIS, JANE DOE, KRAWCZAK,
RICKEY COLEMAN, WILLIAM ADAMS,
VICKI MC CABE, JOSEPH NOVAK,
BILLY RAY THOMPSON, DAVID
MULLIKIN, JOHN DOE, P. SALAMINO,
PAULA MEYER and MICHIGAN
DEPARTMENT OF CORRECTIONS,

Defendants.

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT
AND RECOMMENDATION AND DISMISSING CASE WITHOUT PREJUDICE**

This matter is before the Court on the report issued by Magistrate Judge Charles E. Binder on July 28, 2005 pursuant to 28 U.S.C. § 636(b)(1)(B) and E.D. Mich. LR 72.1 recommending that the Court *sua sponte* dismiss the complaint in this case because the plaintiff has failed to exhaust available administrative remedies. Although the magistrate judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within ten days of service of the report, the plaintiff did not file any objections. The plaintiff's failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Federation*

of Teachers Local 231, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the motion. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). However, the Court agrees with the findings and conclusions of the magistrate judge.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation [dkt # 8] is **ADOPTED**, and the complaint is **DISMISSED WITHOUT PREJUDICE**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: August 17, 2005

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on August 17, 2005.

s/Tracy A. Jacobs
TRACY A. JACOBS